

Stations failed to employ any minorities and failed to implement an adequate EEO program during the license term. (MMB Ex. 2, p. 6.) The petitioners therefore urged the Commission to conduct a Bilingual investigation and, if need be, a hearing "to determine whether the licensee discriminates against minorities or otherwise violates the EEO rule." (Id.)

37. Mr. Bramlett learned of the filing of the Petition from Mr. Van Horn. Mr. Bramlett reacted viscerally. He understood the Petition to allege that he was a racist and guilty of discrimination. (DBI Ex. 1, p. 8.) He was deeply hurt and offended. (Id.; DBI Ex. 4, pp. 31-32; Tr. 184-185, 421-427, 540.) In Mr. Bramlett's mind, he had never discriminated against anyone because of race or anything else. His only goal in hiring employees at the Stations was to find talented workers regardless of race. (DBI Ex. 1, pp. 8-9.) Based upon his mindset, Mr. Bramlett believed the Stations' EEO program was very effective because he had never discriminated against anyone and the Stations had employed many minorities. He set out immediately to gather evidence to prove that the Stations had employed minorities during the License Period. Mr. Bramlett, his wife, his son, Jim, and Mark Goodwin, the Stations' national sales manager since 1986, met to search their collective memory and the few records available to identify minority hires during the License Period. Mr. and Mrs. Bramlett separately devoted a substantial amount of time and effort to this issue over the next couple of days both at work and at home. The information

pertaining to the period from 1982 and 1983 was based upon the recollections of Mr. and Mrs. Bramlett, as confirmed by conversations with Ricky Patton, by Nat Tate, Sr., in his Statement submitted with the Opposition, and by certain news department records. The information for 1986 forward was based upon recollection and certain minority job applications DBI had on file (i.e., Al Burton, Gwendolyn Stephenson and Renita Jimmar). A three-page factual recitation with respect to the minority hires was prepared by Mr. Bramlett and was telecopied to Mr. Van Horn for use in connection with the preparation of the Opposition. (DBI Ex.4, pp. 9-10; DBI Ex. 2, p. 2; DBI Ex.3, p. 8, 25; Tr. 538-540.) Mr. Bramlett's sole focus in responding to the Opposition and subsequent FCC inquiries was to demonstrate that he was not a racist<sup>2/</sup> and that the Stations had not discriminated. (DBI Ex. 1, p. 9-10.)

---

<sup>2/</sup> The record overwhelmingly supports the proposition that Mr. Bramlett was not a racist. Nat Tate, Sr., President of the NAACP in Morgan County and organizer of several NAACP chapters in the area, has worked at the Stations on an off-and-on basis, and Mr. Bramlett continues to provide him with help and information, consultation, anything that could be helpful in his business ventures. Their acquaintance and friendship goes back some 28 years and they visit on a social as well as a professional basis. (DBI Ex. 19, pp. 1-2.) Hundley Batts is a Black man and a friend of Mr. Bramlett who owns a radio station in Huntsville. Mr. Bramlett has consulted with him sharing sales and recruiting techniques among other things. (DBI Ex. 10, pp. 1-2.) Ricky Patton and Terrel Newby are two Blacks whom Mr. Bramlett has helped in their businesses and with whom he has maintained a continuing relationship for many years. (DBI Ex. 8, p. 1.) Finally, Mr. Bramlett hired a Black as president of Bramlett Engineering, an engineering and manufacturing company owned by Mr. Bramlett in the mid-1970's. (DBI Ex. 1, p. 33.)

38. Mr. Bramlett does not recall receiving any specific instructions from Ms. Marshall or Mr. Van Horn in connection with the preparation of the Opposition. He is sure he informed Ms. Marshall that DBI had in fact hired minorities during the License Period and he understood his task was to provide information describing these hires. (Tr. 431-432, 447-448.) Ms. Marshall recalls focusing with Mr. Bramlett on refuting the allegations in the Petition concerning the absence of minority hires and the recruitment sources used in the Reporting Year. She does not recall discussing with Mr. Bramlett before the Opposition was filed the possible outcome of the petition to deny process or the possibility that DBI could get sanctions even though it had minority hires. (Tr. 143-145.)

39. The Opposition was drafted by Ms. Marshall. The factual portion of the Opposition -- paragraphs 4 through 17 -- was based upon information contained in the Stations' Annual Employment Reports, the Form 396 and minority hiring information supplied by Mr. Bramlett, as supplemented by him in telephone conversations with Ms. Marshall. (DBI Ex. 2, p. 2; Tr. 134-139, 143.) The remainder of the Opposition -- the sections entitled "INTRODUCTION" and "CONCLUSION" -- were prepared by Ms. Marshall based upon the facts set forth in paragraphs 4 through 17 without any further input from or discussion with Mr. Bramlett. (DBI Ex. 2, p. 2; DBI Ex. 1, p. 10.) Ms. Marshall did not ask Mr. Bramlett for documentation to support the information he had supplied. She understood in a general fashion that the minority

hiring information supplied by Mr. Bramlett was based in part upon records (the nature of which she did not know) and in part upon recollection. (Tr. 187-188.) At the time of the filing of the Opposition Ms. Marshall had no understanding as to the total number of hires during the License Period. She was focused solely on refuting the allegations in the Petition. (Tr. 183-

his attorneys upon whom he relied to advocate DBI's position before the FCC. (DBI Ex. 1, p. 10.)

41. In the Opposition, DBI discussed (a) its minority recruitment efforts and overall hiring record during the Reporting Year and thereafter through February 1989 (MMB Ex. 4, pp. 8-12) and (b) its minority recruitment efforts and minority hiring record during the balance of the License Period (id. at pp. 12-16). In doing so, DBI corrected certain inaccuracies in earlier EEO-related FCC filings. Specifically, DBI noted that there were 12 hires during the Reporting Year, not 16 as had been reported in the Form 396. Four persons who had worked at the Stations as independent contractors, not employees, were improperly included in the "new hire" total. (Id. at p. 9, note 5.) This mistake was discovered by Mr. Bramlett in the course of the preparation of the Opposition. (DBI Ex. 1, p. 11; DBI Ex. 2, p. 2; Tr. 153-154.) DBI also noted that three minority employees -- Nat Tate, Sr., Bruce E. Hill and Ricky Patton -- had been omitted by oversight from the Stations' 1983 Annual Employment Report and that a fourth minority employee -- Gwendolyn Stephenson -- had been omitted from the 1987 Annual Employment Report because the Report, which was not prepared correctly, failed to provide the requisite racial breakdown. (MMB Ex. 4, pp. 15-16, note 10.) These discrepancies were discovered by Ms. Marshall when she compared the minority hiring information supplied by Mr. Bramlett with the Stations' Annual Employment Reports. The explanations for the discrepancies were provided by

Mr. Bramlett. (DBI Ex. 1, p. 11; DBI Ex. 2, pp. 2-3; Tr. 143-145.)

42. Ms. Marshall testified that the Opposition was structured like any other pleading. It includes a statement of facts supplied by the client and legal argument, based on those facts, prepared by Arent Fox. She said similarly structured pleadings concerning EEO matters had been filed by Arent Fox on many occasions. According to Ms. Marshall, the conclusory statements concerning DBI's compliance with the FCC's EEO rules were not intended to be factual assertions; rather, they were legal conclusions based on the facts set forth in the Opposition and there was no intent to deceive or misrepresent. Ms. Marshall believed in good faith, based upon her review of FCC developments at the time the Opposition was filed, that the legal arguments therein were well founded. (DBI Ex. 2, p. 3-4; Tr. 160-163.)

**3. The July 3, 1989 Letter and DBI's Response.**

43. By letter dated July 3, 1989 (the "July 3 Letter") from Glenn A. Wolfe, Chief of the FCC's EEO Branch, to Mr. Bramlett, Mr. Wolfe stated there was "insufficient information to make a determination that efforts were undertaken to attract minority applicants whenever there were job openings" and therefore requested the following categories of information for "each position filled" during the three-year period from November 1, 1985 to November 1, 1988: "job title, 395-B job classification, the full or part-time status of the position, the date the position was filled, the referral sources contacted, the number

of persons interviewed (indicating those that were minority and female), and the referral source, gender and race or national origin (e.g., Hispanic) of the successful candidate." A copy of this letter was sent to Mr. Van Horn. (MMB Ex. 3; DBI Ex. 4, p. 35.)

44. The July 3 Letter was probably received by Mr. Van Horn before Mr. Bramlett. (DBI Ex. 4, p. 36; Tr. 455-456.) Mr. Bramlett had one brief conversation with Mr. Van Horn concerning the letter and DBI's response. (DBI Ex. 1, p. 12; DBI Ex. 4, pp. 36-37; Tr. 459-460, 746.) Mr. Bramlett believes the conversation took place before he received a copy of the letter. (Tr. 455-456.) According to Mr. Van Horn, he did not ask Mr. Bramlett any questions concerning the specific categories of information requested in the July 3 Letter. (Tr. 745.) The letter asked for specific statistical information which he understood the Stations did not have because the pertinent documents had been lost or destroyed. (DBI Ex. 4, pp. 37-39, 41-43; Tr. 746-747.) Mr. Van Horn recalls asking Mr. Bramlett whether he had any additional information he could provide that was not already in the Opposition and Mr. Bramlett said he did not. (Tr. 745.) Mr. Bramlett could not recall the specifics of his conversation with Mr. Van Horn, although he did remember that his understanding as a result of the conversation was that the Commission was seeking information DBI had already provided in the Opposition. (DBI Ex. 1, p. 12; Tr. 460-461.)

15 Mr. Branlett received a copy of the July 2 Letter



did not read the July 28 Response to see if the questions in the July 3 Letter had been answered. (Tr. 465-466.) Mr. Bramlett recognized for the first time when he read the HDO that in focusing on proving he was not a racist he had not fully responded to the July 3 Letter. He learned after he read the HDO that his counsel believed he had provided all the information available because counsel did not realize Mr. Bramlett had been focusing solely on minority hires. (DBI Ex. 1, pp. 12-13.)

**4. The March 15, 1991 Letter and DBI's Response.**

48. No communications between the FCC and DBI occurred with respect to the Stations' EEO program for the next 18 months. Then, on or about February 20, 1991, Hope G. Cooper, a staff person in the FCC's EEO Branch, telephoned Ms. Marshall regarding the information submitted with the July 28 Response. (MMB Ex. 6, p. 1.) This conversation was followed by a letter dated March 15, 1991, from Mr. Wolfe to Mr. Bramlett (the "March 15 Letter"). (Id.) The March 15 Letter was characterized as a "follow up" to the February 20 conversation between Ms. Cooper and Ms. Marshall. The letter read in pertinent part:

In your inquiry response, you provided information only for positions for which you considered and/or hired minorities. However, we requested recruitment and hiring information for all full-time and part-time hires during the reporting period. Because we do not have enough information to determine whether sufficient efforts were undertaken to attract Black applicants when job openings occurred, we are again requesting the following information.

The letter went on to request the same seven categories of information requested in the July 3 Letter for each position filled during the one-year period November 1, 1987 to November 1, 1988.<sup>10/</sup> (Id.) This was different in scope from the July 3 Letter, which covered the three-year period November 1, 1985 to November 1, 1988. (MMB Ex. 3.)

<sup>10</sup> Mr. Marshall does not recall the specific conversation

Letter. This belief was based upon her recollection that in preparing the Opposition "we had obtained as much information as we could from Mr. Bramlett because he did not have complete records." (Id. at p. 6.) This belief was also based upon her review of the July 3 Letter, which requested the same categories of information as the March 15 Letter for the three-year period November 1, 1985 to November 1, 1988, and the July 28 Response thereto, which merely resubmitted the Opposition and provided no additional information. (Id.; Tr. 196-197, 213, 215.) It had been two years since the Opposition was filed and, especially in view of the nature of the July 28 Response, Ms. Marshall did not consider the possibility that the hiring information in the Opposition might not have been intended to represent all hires during the License Period. (Tr. 216-218.)

51. Ms. Marshall recalls talking to Mr. Bramlett in the course of preparing DBI's response to the March 15 Letter and mentioning it was unusual that the Commission had just asked for one year's worth of information. (DBI Ex. 2, p. 6; Tr. 196-197.) In one conversation, she asked Mr. Bramlett in a general fashion, without going through each category of information requested, whether he had any more information to add with respect to the Stations' EEO efforts and he said he did not. (Id.; Tr. 198-199, 213.) Ms. Marshall did not ask how many job openings there were in the Reporting Year, how many applicants there were for such jobs, what the nature of such jobs were or what the recruitment efforts were with respect to such jobs. Nor did she ask whether

DBI had employment applications or interview records or ask or know whether DBI had payroll records. (Tr. 204-205.) The balance of her conversations with Mr. Bramlett focused on gathering information concerning the period commencing February 1989. (DBI Ex. 2, p. 7.) This information was gathered by Mr. Bramlett at Ms. Marshall's suggestion to show the FCC that if DBI could not provide the requested information with respect to the period specified in the letter it would provide such information with respect to the post license term period. (Tr. 199-200, 213, 565-566, 577-578.)

Stations' computer records, Mr. Bramlett could have provided, for each of the 12 positions filled, the job title, 395-B job classification, full or part time status and the date of hire. There were no written records, however, of the referral sources contacted or the minority status of persons interviewed for each position. In view of the more than two years that had elapsed since the Reporting Year, even if Mr. Bramlett had focused on it at the time, he would not have been confident in his ability to accurately recall recruitment information other than in a general fashion as set forth in the Opposition. At the time of this telephone conversation with Ms. Marshall, Mr. Bramlett had not yet read the March 15 Letter and Ms. Marshall did not review with him the seven categories of information requested in the Letter. (DBI Ex. 1, pp. 13-14; Tr. 467-469, 473-475, 487-488, 653-655.)

53. The balance of Mr. Bramlett's conversations with Ms. Marshall with respect to the March 15 Letter focused on gathering information regarding the period commencing February 1989. Mr. Bramlett received a copy of the March 15 Letter sometime before DBI's response thereto was filed with the FCC on April 18, 1991. By that time, he had hashed and rehashed the subject matter thereof with Ms. Marshall over the telephone and he was already gathering information, pursuant to her instructions, toward the preparation of a response. (DBI Ex. 1. p. 14: Tr. 653-655.)

had already done so and he felt secure in that fact. (Tr. 472-473; DBI Ex. 1, p. 14.) Based on his conversations with Ms. Marshall, Mr. Bramlett was not concerned by the fact that DBI had received a second inquiry letter from the FCC. He was confident that Arent Fox was doing the "legal work" and that he had answered every question posed by his law firm. (Tr. 472-474.)

54. DBI responded to the March 15 Letter by letter dated April 18, 1991, with attachments, from Ms. Marshall to Mr. Wolfe (the "April 18 Response"). (MMB Ex. 7.) The April 18 Response included Ms. Marshall's cover letter and a six-page Supplemental Report (the "Supplemental Report") to which there were attached Exhibit A (a one-page Statement dated April 18, 1991, signed by Mr. Bramlett (the "Statement")), Exhibit B (a letter dated April 8, 1991, from Nathan W. Tate, Sr. to Mr. Bramlett) and Exhibit C (a letter dated April 7, 1991, from Hundley Batts to Mr. Bramlett). (Id.)

55. The Supplemental Report is divided into two basic parts. The first part (MMB Ex.7, pp. 2-4) consists of an introduction and what purports to be a summary of the information set forth in the July 28 Response (i.e., the Opposition), preceded by the following statement:

In response to the instant request, the licensee has reviewed the stations' records and determined that it has nothing more to add. All of the information which is available for the 1982 through February 1989 period concerning the stations' EEO efforts was supplied in its July 28 response.

The first part of the Supplemental Report concludes with the following paragraph on page 4 of MMB Exhibit 7 (the "Concluding Paragraph"):

As a result of their contact with these recruitment sources, from 1982 through February 1989, the stations hired approximately 20 new employees of which 7, or 35%, were African-Americans. Therefore, the stations' efforts were very successful despite the fact that there are only 7.4% African-Americans in the local labor force. (Excerpted omitted)

57. The statement in the Supplemental Report that there was "nothing more to add" was based upon Ms. Marshall's mistaken belief about the facts, as set forth in paragraph 50 above. The Concluding Paragraph was added by Ms. Marshall with the intention of summarizing the preceding two pages of the Supplemental Report and pertinent portions of the Opposition. Ms. Marshall did not discuss the Concluding Paragraph with Mr. Bramlett. The statement that there were "approximately 20" new employees during the License Period was based upon the statements in the Opposition that there were 12 new hires in the Reporting Year and seven minority hires in the balance of the License Period. At the time of the preparation of the Supplemental Report, Ms. Marshall believed that the information set forth in the Opposition represented all the information available for the License Period. While the total number of hires discussed in the Opposition equaled 19, Ms. Marshall wrote "approximately 20" to account for the fact that DBI did not have complete records and that some of the information in the Opposition was based on memory. (DBI Ex. 2, pp. 8-9; Tr. 216-218.)

58. Until sometime in December 1991, Ms. Marshall did not doubt the accuracy of the statement that there had been approximately 20 new employees during the License Period. In her words:

I didn't question the number 20, as I said before, because I pictured this as a small station, as a Mom and Pop organization, and as a very stable organization where few people came and left. And even if it was a larger organization, I listen to



WMAL, Harden and Weaver, every morning and those two people have been there for 20 or 30 years and nobody has left. They're the same engineers -- and I have never visited radio stations, and the fact that there were only 20 people that they hired during that seven year period didn't strike me as being unusual and I never questioned it in my own mind. I never questioned Mr. Bramlett about it.

(DBI Ex. 2, p. 9.) Ms. Marshall did not focus on the composition of the 20 hires: 12 non-minorities in one year -- the Reporting Year -- and seven minorities for the balance of the License Period. She regrets not questioning Mr. Bramlett further about this scenario, but she believed the number 20 was correct. (Id.) Mr. Van Horn had a similar understanding of the nature of the Stations and the size and stability of its staff. He had no reason to doubt the accuracy of the number of hires. (DBI Ex. 4, pp. 44-45, 51-53.)

59. Mr. Bramlett confirms that the Concluding Paragraph was prepared by Ms. Marshall and not discussed with him. Mr. Bramlett did not provide Ms. Marshall with this information.

(DBI Ex. 1, p. 16.) In Mr. Bramlett's words:

I would never purport to tell anybody in the radio business with a straight face that you hire 12 people in one year, 8 people in the next year and a half and only 7 people, all of whom were minorities, in the previous six years in Decatur, Alabama, or at any radio station. I know it's not true and I would never try to get anybody to believe it.

(Id.)

60. Mr. Bramlett's Statement attached to the Supplemental Report reads in pertinent part:

I have read the foregoing Supplemental Report relative to the employment practices of Stations WHOS and WDRM and have determined that, to the best of my knowledge and belief, all of the facts contained therein concerning the employment record and affirmative action efforts of WHOS and WDRM were gathered and supplied by me and my staff and are accurate and complete.

Before signing his Statement, Mr. Bramlett "flipped through" the April 18 Response in order to locate the information he had supplied to Ms. Marshall with respect to hires commencing in February 1989. Mr. Bramlett read such information (pages 5 through 7 of MMB Exhibit 7) carefully and confirmed its accuracy. Mr. Bramlett did not read the information on page 4 of the April 18 Response where it was represented for the first time in the Concluding Paragraph that DBI had approximately 20 hires during the License Period. As was his habit, when he saw a page with lots of footnotes he figured there was no sense reading it because it was legalese. Mr. Bramlett was asked by Ms. Marshall to review the draft and let her know if any changes were necessary. Mr. Bramlett understood that the facts he was attesting to were the facts he had provided and that those were the facts he was to review for accuracy. Mr. Bramlett was therefore unaware at the time the April 18 Response was filed that DBI had made any representation as to the total number of hires at the Stations' during the License Period. (Tr. 478-483, 560-564, 570-571.)

61. Ms. Marshall confirms that, in reviewing the draft of the Supplemental Report with Mr. Bramlett, she focused specifically on the new facts set forth at pages 5 through 7 of MMB

Exhibit 7 and did not discuss the materials preceding those pages, which represented her attempt to summarize the information set forth in the Opposition. (DBI Ex. 2, p. 8; Tr. 212.)

5. The October 7, 1991 Telephone Call and DBI's Response.

62. The next communication between the FCC and DBI took place on or about October 7, 1991, when Ms. Cooper telephoned Ms. Marshall. (HDO at paragraph 10.) Ms. Marshall recalls that Ms. Cooper, in a brief conversation, questioned the variation in the Stations' hiring rate, noting that for the Reporting Year there were 12 hires and that this was more than other years either before or after. (DBI Ex. 2, p. 10; Tr. 231.) After her conversation with Ms. Cooper, Ms. Marshall telephoned Mr. Bramlett. She recalls telling Mr. Bramlett that Ms. Cooper had questioned why there was a variation in hiring rates, comparing the 12 new hires in the Reporting Year to a lesser number on either side of that time period. Mr. Bramlett explained that the turnover rate at radio stations varied from year to year. During this short conversation, Ms. Marshall focused on the variation in turnover rate; she did not focus at all on the number 20 because she had no doubt as to its accuracy. (DBI Ex. 2, p. 10; Tr. 231-233.)

63. According to Mr. Bramlett's recollection of his conversation with Ms. Marshall in October 1991, Ms. Marshall simply asked him how there could be a difference in the 12 hires in the Reporting Year and the eight in the year and a half thereafter.

Mr. Bramlett answered that employee turnover is different from one year to another. He was perplexed as to why Ms. Cooper had asked such a question, but in his mind it did relate to the one-year period addressed in the March 15 Letter and the new information for the period commencing February 1989 supplied in the April 18 Response. (DBI Ex. 1, p. 17; Tr. 566-570.) Mr. Bramlett viewed his response as favorable to DBI because even though the turnover rate was going down DBI's EEO efforts had produced more minority applicants and hires. (Tr. 569.) Mr. Bramlett recalls that there was only one call from Ms. Marshall and that she asked only that one question. His response did not require a lot of concentration. In this conversation, Ms. Marshall never mentioned the number 20 and never discussed the total hires over the License Period. (DBI Ex. 1, p. 17; Tr. 575-576.)

64. When Mr. Bramlett received the draft Statement prepared by Ms. Marshall on October 10, he scanned the statement and found paragraph 4 which discussed his response to Ms. Marshall concerning turnover rate. Mr. Bramlett read that portion of the statement carefully before signing the statement. (Tr. 651-652.) Mr. Bramlett believed that the October 10 statement was accurate and responsive to the FCC's request. (DBI Ex. 1, pp. 17-18.)

65. By letter dated October 15, 1991, from Ms. Marshall to Ms. Cooper (the "October 15 Response"), including a three-page Statement dated October 10, 1991, signed by Mr. Bramlett (the "October 10 Statement"), DBI responded to Ms. Cooper's informal

telephonic inquiry. (MMB Ex. 8.) At paragraph 3 of the October 10 Statement, Ms. Cooper's informal request is described as follows:

Ms. Cooper has requested information concerning the number of new hires at the stations during the period 1982 through 1989 and thereafter. Specifically, Ms. Cooper is questioning why so few new hires (20) were reported for that seven-year period when the stations had as many as eight, almost one-half that number, job openings during the 15-month period from February 1989 through mid-April 1991, alone.

DBI's response to this request is set forth at paragraph 4 of the October 10 Statement, as follows:

In response to this request, the stations' staff has again reviewed the stations' records and determined that there is nothing more to add. All of the information which is available for the 1982

question statements prepared by his attorneys for his signature. Mr. Bramlett admits he made a "terrible mistake"--"the biggest mistake of my career." (DBI Ex. 1, p. 19; 575-576.) Mr. Bramlett's focus from the time of his receipt of the Petition until December 1991 was the Stations' EEO efforts and minority hiring, not the total number of hires. (DBI, Ex. 1, p. 19.)

67. The "stations' staff" referred to in paragraph 4 of the October 10 Statement meant Mr. Bramlett. Mr. Bramlett believed, as stated in paragraph 4, that all the information available for the License Period with respect to the Stations' EEO efforts had already been provided to the FCC. By "EEO efforts" he meant minority hires and efforts to recruit minorities. (Id.) Mr.

[REDACTED]

**6. October 15, 1991 Through Early January 1992.**

69. Between October 15, 1991, and mid-December 1991, there were a series of telephone calls between Ms. Marshall and Ms. Cooper and, on one occasion, Mr. Wolfe. (HDO at paragraph 11; DBI Ex. 2, p. 11.) The purpose of the conversations was to clarify the number of total hires during the License Period. Ms. Cooper had concluded, based on her review of the Stations' Annual Employment Reports, that the number of hires during such period must have been more than 20. At first, Ms. Marshall did not agree with Ms. Cooper's analysis. Ms. Marshall did her own analysis of the Annual Employment Reports and arrived at a total of 20 new hires for the period.<sup>12/</sup> (DBI Ex. 2, pp. 11-12.) Ms. Marshall calculated the change from year to year in the number of full-time and part-time employees at the Stations as reflected in the Stations' Annual Employment Reports, after modifying the numbers to reflect the corrections made in the Opposition. She counted any increase in the total number of full-time and part-time employees from one year to the next as an increase in the number of hires. She added all such increases from year to year during the License Period and came up with 20. She did not

---

<sup>12/</sup> The number "20" keeps cropping up. It was represented that there were "approximately" 20 new hires during the License Period based upon Ms. Marshall's adding the 12 new hires during the Reporting Year to the 7 hires for the balance of the License Period; then there were the 20 hires based upon the 12 new hires for the Reporting Year plus the 8 new hires for the post February 1989 period; and finally there were 20 full-time employees at the Stations during the reporting period covered by the 1988 Annual Employment Report. (MMB Ex. 4, pp. 10-11.)

subtract any decreases in such employees from year to year. (Id. at p. 12.) After follow-up clarifying conversations with Ms. Cooper, Ms. Marshall realized that under her analysis, based solely on the Annual Employment Reports, there were no new hires between 1987 and 1988 because the number of full-time and part-time employees in the 1988 Report was less than the corresponding number in the 1987 Report. In fact, however, as had been reported in the Renewal Applications (as corrected in the Opposition) there had been 12 hires during that period. She therefore came to agree with Ms. Cooper's analysis and concurred that there must have been at least 32 new hires during the License Period (i.e., 20 based on Ms. Marshall's analysis of the Annual Employment Reports plus 12 in the Reporting Year). (Id.; Tr. 236-240.)

70. Ms. Marshall discussed with Mr. Bramlett her conversations with Ms. Cooper. While she does not have a specific recollection of telling Mr. Bramlett that DBI had represented there were approximately 20 hires at the Stations during the License Period, the premise of the discussion was that there must have been more than 20 hires in the License Period, so the number 20 must have been discussed at this point. (Tr. 238-241.) Because she believed that the information previously provided to the Commission was based upon all available documents, Ms. Marshall asked Mr. Bramlett, probably in mid-December 1991, to have his staff members search their collective recollection to see whether they could remember additional hires, and related recruitment



information, during the License Period. (DBI Ex. 2, pp. 12-13.) Ms. Marshall could not recall Mr. Bramlett's reaction to her request, nor could she recall Mr. Bramlett commenting as to the accuracy or inaccuracy of the number 20. One comment made by Mr. Bramlett during their discussion about the total number of hires in the License Period did stick in her mind.<sup>13/</sup> Mr. Bramlett said something to the effect of, "Oh, you mean now I have to do more than one year," or "go back beyond a year," or something to that effect. Ms. Marshall thought the comment was odd at the time, but she did not dwell on it. She just focused on having Mr. Bramlett remember additional hires. (Id. at p. 13; Tr. 238, 241, 286-287.)

71. Mr. Bramlett recalled the following concerning his conversations with Ms. Marshall in December, 1991, regarding Ms. Marshall's telephone calls with Ms. Cooper. Ms. Marshall said Ms. Cooper had convinced her there must have been at least 30 new hires at the Stations during the License Period. Ms. Marshall noted that this was more than the approximately 20 hires that DBI had described previously and she asked Mr. Bramlett to see whether he or his staff could remember additional hires, and related recruitment information, during the License Period. This was the first time Mr. Bramlett became aware that DBI had made statements in the April 18 Response and the October 15 Response about the total number of hires during the License Period. He

---

<sup>13/</sup> Mr. Bramlett may have said other things as well, but Ms. Marshall could not recall them. (Tr. 257.)